

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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## GREEN SOLUTIONS RECYCLING, LLC.

Case No. 3:16-cv-00334-MMD-VPC

Plaintiff,

v.

REFUSE, INC.; RENO DISPOSAL  
COMPANY, INC.; WASTE MANAGEMENT  
OF NEVADA, INC.; CITY OF RENO; and  
DOES 1-10: *et al.*

## Defendants.

## I. SUMMARY

Plaintiff Green Solutions Recycling, LLC (“GSR”) initiates this action against the City of Reno (“the City”) and three Nevada companies,<sup>1</sup> alleging that Defendants entered into an exclusive franchise agreement limiting competition and fixing prices for the collection of recyclable materials, thereby restraining trade in violation of both federal and state law. (ECF No. 1.) The Court ordered GSR to show cause as to why the Court has subject matter jurisdiction over the federal claims, given that the allegations appear to involve a local dispute among the City and Nevada companies and does not implicate interstate commerce. (ECF No. 35.) The Court has reviewed GSR’s response (“Plaintiff’s Response”) (ECF No. 38), as well as Defendants’ response and joinder (ECF Nos. 45,

<sup>1</sup>The private party defendants are Refuse, Inc. ("Refuse"), Reno Disposal Company, Inc. ("RDC") and Waste Management of Nevada, Inc. ("WMN"), who are alleged to be Nevada entities. (ECF No. 1 at 2.)

1 46).<sup>2</sup> The Court finds that GSR has satisfied the Court's Order — Defendants' alleged  
 2 conduct under GSR's theory as explained in GSR's Response implicates interstate  
 3 commerce. Accordingly, the Court will address the pending motions.

4 Before the Court are Plaintiff's Motion for Preliminary Injunction ("Plaintiff's Motion")  
 5 (ECF No. 2) and Defendants' Motion to Dismiss ("Defendants' Motion") (ECF No. 15).  
 6 Because the Court will grant Defendants' Motion, the Court denies Plaintiff's Motion as  
 7 moot.

8 **II. BACKGROUND**

9 The following facts are taken primarily from the Complaint.

10 NRS § 268.081 permits local governments to displace or limit competition of certain  
 11 services, including the collection and disposal of waste, but not the collection of "recyclable  
 12 materials." (ECF No. 1 at 3.) On November 7, 2012, the City entered into an Exclusive  
 13 Service Area Franchise Agreement for Commercial Solid Waste and Recycle Materials  
 14 with Defendant RDC ("Franchise Agreement").<sup>3</sup> (ECF No. 1 at 4.) The City did not have  
 15 the statutory authority under NRS § 268.081 to enter into the Franchise Agreement with  
 16 respect to "the collection or purchase of recycle material." (*Id.*) In April 2016, WMN  
 17 communicated with one of GSR's customers about the Franchise Agreement and the fact  
 18 that only WMN was permitted to haul recycling containers. (*Id.*) Shortly thereafter, the City  
 19 accused GSR of operating in violation of the Franchise Agreement. (*Id.*) According to  
 20 GSR, Defendants have attempted to interfere and destroy its business by preventing GSR  
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23  
 24 <sup>2</sup>Defendants do not appear to dispute GSR's contention that limiting competition on  
 25 recyclable materials as characterized in GSR's opposition to Defendants' Motion and  
 Plaintiff's Response implicates interstate commerce. Defendants, however, argue with  
 26 GSR's definition of recyclable materials and challenge GSR's prudential standing. (ECF  
 No. 45.)

27 <sup>3</sup>The Complaint references "Franchise Agreements" but it appears from  
 28 Defendants' Motion and Plaintiff's opposition that the allegations here involve only a single  
 Franchise Agreement between the City and RDC. (ECF No. 15 at 3; ECF No. 15-1; ECF  
 No. 20 at 2.)

1 from “seeking or servicing clients for the collection of recyclable material.<sup>4</sup>” (*Id.*) Based on  
 2 these allegations, GSR asserts claims for violation of Section 1 of the Sherman Antitrust  
 3 Act, 15 U.S.C. § 1 (“the Act”) and the Commerce Clause of the United States Constitution,  
 4 and two state law claims. (*Id.* at 5-7.)

5 **III. LEGAL STANDARD**

6 A court may dismiss a plaintiff’s complaint for “failure to state a claim upon which  
 7 relief can be granted.” Fed. R. Civ. P. 12(b)(6). A properly pleaded complaint must provide  
 8 “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed.  
 9 R. Civ. P. 8(a)(2); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). While Rule 8  
 10 does not require detailed factual allegations, it demands more than “labels and  
 11 conclusions” or a “formulaic recitation of the elements of a cause of action.” *Ashcroft v.*  
 12 *Iqbal*, 556 US 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 555). “Factual allegations  
 13 must be enough to raise a right to relief above the speculative level.” *Twombly*, 550 U.S.  
 14 at 555. Thus, “[t]o survive a motion to dismiss, a complaint must contain sufficient factual  
 15 matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Iqbal*, 556  
 16 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570).

17 In *Iqbal*, the Supreme Court clarified the two-step approach district courts are to  
 18 apply when considering motions to dismiss. First, a district court must accept as true all  
 19 well-pleaded factual allegations in the complaint; however, legal conclusions are not  
 20 entitled to the assumption of truth. *Id.* at 678-79. Mere recitals of the elements of a cause  
 21 of action, supported only by conclusory statements, do not suffice. *Id.* at 678. Second, a  
 22 district court must consider whether the factual allegations in the complaint allege a  
 23 plausible claim for relief. *Id.* at 679. A claim is facially plausible when the plaintiff’s  
 24 complaint alleges facts that allow a court to draw a reasonable inference that the  
 25 defendant is liable for the alleged misconduct. *Id.* at 678. Where the complaint fails to  
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27 <sup>4</sup>This is the only indirect allegation in the Complaint as to the nature of GSR’s  
 28 business. GSR did assert in its opposition that “[s]ince 2006, GSR has been in the private  
 recycling business in the Reno market.” (ECF No. 20 at 2.)

1 “permit the court to infer more than the mere possibility of misconduct, the complaint has  
 2 alleged — but it has not ‘shown’ — ‘that the pleader is entitled to relief.’” *Id.* at 679 (quoting  
 3 Fed. R. Civ. P. 8(a)(2)) (alteration omitted). When the claims in a complaint have not  
 4 crossed the line from conceivable to plausible, the complaint must be dismissed. *Twombly*,  
 5 550 U.S. at 570. A complaint must contain either direct or inferential allegations concerning  
 6 “all the material elements necessary to sustain recovery under *some* viable legal theory.”  
 7 *Id.* at 562 (quoting *Car Carriers, Inc. v. Ford Motor Co.*, 745 F.2d 1101, 1106 (7th Cir.  
 8 1984)).

9 **IV. DISCUSSION**

10 **A. Claims Against WMN and Refuse**

11 Plaintiff’s claims are based on the contention that the Franchise Agreement covers  
 12 the collection of recycle materials that is not within the statutory definition of “waste.” (ECF  
 13 No. 20 at 5-7.) The Franchise Agreement is between the City and RDC. (ECF No. 1 at 4.)  
 14 Plaintiff fails to assert specific allegations as to WMN and Refuse, but generally lump them  
 15 together with the other Defendants. Plaintiff argues that Refuse and RDN are wholly  
 16 owned subsidiaries of WMN and Plaintiff names them because of the lack of information  
 17 as to which employees or agents of these companies has engaged in the activities alleged  
 18 in the Complaint. (ECF No. 20 at 4.) However, these Defendants have their own corporate  
 19 identity, and the Complaint does not assert any allegations to support proceeding on an  
 20 alter ego theory. Moreover, the Complaint contains only conclusory allegations as to WM  
 21 and Refuse, which are not sufficient for the Court to reasonably infer more than a mere  
 22 possibility of misconduct with respect to these two Defendants. The Court agrees with  
 23 WMN and Refuse that the Complaint fails to state a claim against them. Claims against  
 24 WMN and Refuse will be dismissed without prejudice and with leave to amend.

25 **B. First Claim for Relief: Violation of the Act**

26 The parties do not dispute that the Act is not implicated where the displacement or  
 27 limitation on competition involves the services covered under NRS § 268.081. (ECF No.  
 28 15 at 8-9; ECF No. 20 at 5.) GSR readily acknowledges that the City has “authority to

1 displace competition for the collection of recyclable materials that are treated as waste.”  
2 (ECF No. 20 at 5.) GSR argues, however, that “recyclable materials that are not discarded  
3 but rather are sold” are not “waste” within the meaning of NRS § 268.081 and cannot be  
4 subject to the Franchise Agreement without violating the Act.<sup>5</sup> (*Id.* at 6.) Defendants  
5 counter that GSR’s proposed construction would require the Court to determine the waste  
6 generator’s intent. (ECF No. 27 at 9-11.) Defendants also argue that materials are “waste”  
7 if there is a negative cost to have the materials removed, and the Franchise Agreement  
8 does not cover materials that are segregated and sold for profit. (*Id.* at 5-8.) Defendants  
9 argue in the alternative that 268.081(11) covers recyclable waste materials.

10        GSR's arguments fall short because the claim as characterized in GSR's opposition  
11 is not the claim raised in the Complaint. The Complaint does not allege that the Franchise  
12 Agreement displaces or limits competition over the collection of recyclable materials that  
13 are not discarded as waste. Instead, the Complaint alleges that the City "did not have  
14 authority to enter into the Franchise with regard to the collection or purchase of recyclable  
15 material." (ECF No. 1 at 4.) The distinction that GSR draws in its opposition is not readily  
16 apparent in its Complaint, despite GSR's protest that this allegation does not say what it  
17 actually says. (ECF No. 20 at 5.) In other words, the Complaint does not convey what GSR  
18 states in its opposition — "that recyclable materials that are *treated as waste* are not in  
19 fact 'recyclable materials' but rather are 'other waste' pursuant to NRS 268." (ECF No. 20  
20 at 5 (emphasis in original).) GSR apparently meant to allege that the City did not have  
21 authority to displace or limit competition for the collection of recyclable materials that are  
22 not treated as waste. However, as Defendants point out, the Complaint is based on the  
23 general allegation that the City limits competition in violation of the Act by granting the  
24 exclusive Franchise Agreement for the collection of recyclable materials. The Complaint  
25 makes no distinction between recyclable materials that are discarded and recyclable  
26        ///

27       <sup>5</sup>NRS § 268.081(3) provides in pertinent part that a city may displace or limit  
28 competition in the “[c]ollection and disposal of garbage and other waste.”

1 materials that are sold. The Complaint does not even allege the nature of GSR's business,  
 2 what it purportedly collects and how the "recyclable materials" it collects "are not discarded  
 3 but rather are sold." (ECF No. 20 at 6.) In fact, the Complaint does not even allege that  
 4 GSR is in the business of collecting recyclable materials, let alone the type of recyclable  
 5 materials that GSR claims is excluded from NRS 268.081(3)'s definition of "other waste."  
 6 The Complaint is devoid of any allegations to support GSR's theory of liability — that the  
 7 recyclable materials it collects are not waste under NRS 268.081(3) for which the City may  
 8 limit competition. As alleged, the Complaint fails to allege sufficient facts to entitle GSR to  
 9 relief under the Act.

10 The Court will dismiss the first claim for relief with leave to amend. Based on GSR's  
 11 opposition and response to the Order to Show Cause, the Court cannot at this point find  
 12 that amendment will be futile.

13 **C. Second Claim for Relief: Violation of the Commerce Clause**

14 A claim for violation of the dormant Commerce Clause requires a showing that the  
 15 offending conduct "discriminates against interstate commerce." See *C & A Carbone, Inc.*  
 16 *v. Town of Clarkstown, New York*, 511 U.S. 383, 390 (1994).

17 Defendants argue that the Complaint does not allege any burden on interstate  
 18 commerce. (ECF No. 15 at 21-21.) Plaintiff points to paragraph 36 of the Complaint, which  
 19 alleges that "[T]he Agreements entered into by Defendants improperly burdens or  
 20 discriminates against interstate commerce and thus is invalid pursuant to the Commerce  
 21 Clause . . ." (ECF No. 20 at 12, citing ECF No. 1 at 6, ¶ 36.) Such general recitation of the  
 22 legal requirement for establishing a claim is insufficient to state a claim for relief. See *Iqbal*,  
 23 556 U.S. at 678. In fact, the Complaint makes no allegations that the Franchise Agreement  
 24 affects interstate commerce, let alone how the Agreement burdens interstate commerce.<sup>6</sup>  
 25 The Court will dismiss this claim with leave to amend.

26  
 27 <sup>6</sup>While the Court finds that Plaintiff has satisfied the Order to show cause based on  
 Plaintiff's Response, Plaintiff's Response cannot cure the factual and legal deficiencies of  
 28 its pleadings.

1                   **D. State Law Claims**

2                   Because the Court dismisses the federal claims, the Court declines to exercise  
3 supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1337(c).  
4 Defendants' Motion to dismiss the state law claims will be denied as moot.

5                   **V. CONCLUSION**

6                   The Court notes that the parties made several arguments and cited to several cases  
7 not discussed above. The Court has reviewed these arguments and cases and determines  
8 that they do not warrant discussion or reconsideration as they do not affect the outcome  
9 of the parties' Motions.

10                  It is therefore ordered that Defendants' Motion to Dismiss (ECF No. 15) is granted  
11 in part and denied in part. It is granted with respect to Plaintiff's claims against Refuse,  
12 Inc. and Waste Management of Nevada, Inc. and Plaintiff's two federal claims. It is denied  
13 as moot with respect to the two state law claims.

14                  It is ordered that Plaintiff's Motion for Preliminary Injunction (ECF No. 2) is denied  
15 as moot.

16                  Plaintiff is given leave to amend its Complaint, should Plaintiff wish to proceed and  
17 cure the deficiencies of its claims. Plaintiff must file an amended complaint within thirty  
18 (30) days. Failure to do so will result in dismissal of the federal claims and the claims  
19 against Refuse and WMN with prejudice.

20                  DATED THIS 27<sup>th</sup> day of March 2017

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23                  MIRANDA M. DU  
24                  UNITED STATES DISTRICT JUDGE  
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